

**REMARKS**

This is in response to the Office Action mailed December 3, 2008 ("the Office Action"). By this reply, claims 38, 64, 65, and 66 are amended. The originally filed specification, drawings, and claims fully support the subject matter of the amended claims. Accordingly, claims 38-41, 43-45, 47-51, and 57-66 are pending.

**Obviousness Rejections of Claims 38, 45, 47-49, 51, 58-61, and 65-66**

In the Office Action, claims 38, 45, 47-49, 51, 58-61, and 65-66 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,077,274 to Ouchi et al. ("Ouchi"). Specifically, the Examiner recognizes that Ouchi does not specifically teach that the joint at the distal end of the basket is configured to fail when a predetermined force less a force required to cause one of the plurality of wires or the proximal end of the basket to fail is applied to the joint. The Examiner, however, asserts that Ouchi teaches that the tip is affixed by silver soldering and the wires are of stainless steel. Relying on the present specification, the Examiner further asserts that since silver is a softer alloy, the tip will fail before the basket wires.

The specification of the present application, however, does not support the Examiner's argument. Instead the specification, at [0052], states that a tip joint made from an alloy with a higher percentage of silver would release at a force lower than that required for an otherwise identical tip joint made from an alloy with a lower percentage of silver. The specification does not state that a tip joint made from a silver alloy will necessarily release before failure of the wires. There are many other factors that must be accounted for, such as the tip and wire dimensions. For example, a tip joint that is made with a relatively large amount of silver alloy may not fail before a stainless steel wire that is very fine or a proximal joint that is made with a relatively small amount of

silver alloy. Ouchi therefore not only does not expressly teach that the distal joint fails at a force less than that required to cause a wire or the proximal end to fail, but also does not inherently teach this feature.

In addition, even assuming *arguendo* that the silver soldering at the tip will fail before the stainless steel basket wires will fail, the Examiner fails to show that Ouchi teaches that the force required for the tip joint to fail is less than both a force required to cause one of the plurality of wires to fail and a force required to cause the proximal end of the basket to fail. Independent claims 38, 64, 65, and 66 have been amended to make this recitation clear. For example, Ouchi teaches that the plurality of wires at the proximal end of the basket “are inserted into a rear-end bundling pipe 50 and fixed thereto by silver soldering or the like,” (see col. 3, ll. 7-9), and that the wires at the distal end “are inserted into a short tip-end bundling pipe 20 and fixed thereto by silver soldering or the like.” See col. 3, ll. 3-5. Therefore, Ouchi discloses a similar, if not the same, connection at the proximal and distal ends. Ouchi therefore does not expressly or inherently disclose that the force required for the tip joint to fail is less than the force required to cause the proximal end of the basket to fail. Instead, Ouchi discloses that both the distal and proximal ends of the basket are affixed by the same structure and material, and, therefore, it is indeterminate whether the force required for the tip joint to fail is less than the force required to cause the proximal end of the basket to fail. Therefore, Applicant requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 38, 59, and 65-66.

Since claims 45, 47-49, 51, 58, and 60-61 depend from independent claims 38 and 59, Applicant also requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 45, 47-49, 51, 58, and 60-61 for at least these same reasons.

#### **Obviousness Rejections of Claims 43-44**

In the Office Action, claims 43-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ouchi in view of U.S. Patent No. 5,059,199 to Okada et al. ("Okada"). Claims 43-44 depend from independent claim 38 discussed above. The Examiner only relies on Okada to allegedly teach that each of the plurality of wires comprises four bends and the basket in the expanded position is wider at the distal end than at the proximal end. While Applicant does not concede that the Examiner's allegations are true, even assuming *arguendo* that they are, Okada does not teach the elements missing from Ouchi discussed above. Therefore, Applicant requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 43-44 for at least these same reasons.

#### **Obviousness Rejections of Claims 39-41**

In the Office Action, claims 39-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ouchi in view of U.S. Patent No. 5,944,728 to Bates ("Bates 1"). Claims 39-41 depend from independent claim 38 discussed above. The Examiner only relies on Bates 1 to allegedly teach that the distal end of at least one wire is scored and that the cross section of at least one of the plurality of wires is D-shaped or V-shaped. While Applicant does not concede that the Examiner's allegations are true, even assuming *arguendo* that they are, Bates 1 does not teach the elements missing from Ouchi discussed above. Therefore, Applicant requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 39-41 for at least these same reasons.

### **Obviousness Rejection of Claim 50**

In the Office Action, claim 50 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ouchi in view of U.S. Patent No. 5,792,145 to Bates et al. ("Bates 2"). Claim 50 depends from independent claim 38 discussed above. The Examiner only relies on Bates 2 to allegedly teach that the distal end of the tip member is a spherico-conical shape. While Applicant does not concede that the Examiner's allegations are true, even assuming *arguendo* that they are, Bates 2 does not teach the elements missing from Ouchi discussed above. Therefore, Applicant requests withdrawal of the 35 U.S.C. § 103(a) rejection of claim 50 for at least these same reasons.

### **Obviousness Rejection of Claim 57**

In the Office Action, claim 57 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ouchi in view of U.S. Patent No. 5,935,139 to Bates ("Bates 3"). Claim 57 depends from independent claim 38 discussed above. The Examiner only relies on Bates 3 to allegedly teach that the handle is detachable. While Applicant does not concede that the Examiner's allegations are true, even assuming *arguendo* that they are, Bates 3 does not teach the elements missing from Ouchi discussed above. Therefore, Applicant requests withdrawal of the 35 U.S.C. § 103(a) rejection of claim 57 for at least these same reasons.

### **Obviousness Rejections of Claims 62-64**

In the Office Action, claims 62-64 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ouchi in view of U.S. Patent No. 6,605,102 to Mazzocchi et al. ("Mazzocchi"). Claims 62-63 depend from independent claim 59 discussed above. The Examiner only relies on Mazzocchi to allegedly teach that the tip member exerts a pressure on the respective distal ends of the plurality of wires, the tip member being the

clamp, disposed within the lumen to retain the wires within the lumen. While Applicant does not concede that the Examiner's allegations are true, even assuming *arguendo* that they are, Mazzocchi does not teach the elements missing from Ouchi discussed above. Therefore, Applicant requests withdrawal of the 35 U.S.C. § 103(a) rejection of claims 62-63 for at least these same reasons.

Furthermore, amended independent claim 64 recites that the tip member is configured to fail when a predetermined force is applied to the basket that is less than both a predetermined force required to cause the wires to fail and a predetermined force required to cause the proximal end of the basket to fail. As discussed above, Ouchi does not disclose these features. Mazzocchi does not teach this missing element. Therefore, Applicant requests withdrawal of the 35 U.S.C. § 103(a) rejection of claim 64.

### **Double Patenting Rejection**

In the Office Action, the Examiner rejected claims 38, 47-51, and 57-66 on the ground of nonstatutory obviousness-type double patenting over claims 1-3, 5-11, 18, 42-43, 46, 48-52, and 60 of U.S. Patent No. 6,673,080. Even though Applicant does not necessarily agree with this rejection, Applicant submits herewith a Terminal Disclaimer to overcome the Examiner's rejection. The filing of this Terminal Disclaimer in no way manifests an admission by Applicant as to the propriety of the double patenting rejection. See M.P.E.P. § 804.02 citing *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Applicant reserves the right to argue the distinctness or lack of distinctness of the pending claims and the claims of the '080 patent at a later date, if necessary. Applicant respectfully requests the reconsideration and withdrawal of the double-patenting rejection.

### **Conclusion**

Applicant submits that the claimed invention is not anticipated nor rendered obvious in view of the prior art references cited against the claims. Applicant therefore requests reconsideration and reexamination of the application, and the timely allowance of the pending claims.

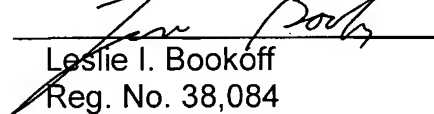
The Office Action contains characterizations of the claims and the alleged related art, with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

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Dated: February 25, 2009

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